Criminal Appeal No.184-DB of 1998.

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Date of Decision: November 15, 2007.

Kulwant Singh and another **...** Appellants

VERSUS

State of Punjab **...** Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr. Vinod Ghai, Advocate,
for the appellants.

Mr. V.K. Jindal, Additional Advocate General, Punjab.

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MOHINDER PAL, J.

By way of filing this appeal, appellants Kulwant Singh

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and Kirpal Singh alias Pala have challenged their conviction and sentence recorded by the learned Sessions Judge, Rupnagar, as per judgment and sentence order dated April 02, 1998. Each of the appellant was convicted under Section 302 read with Section 34 of the Indian Penal Code (for short `the Code') and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- and in default thereof to undergo further rigorous imprisonment for one year. Karamjit Singh and Sadhu Singh, who were also tried along with the appellants, were acquitted by the trial Court.

2. Facts necessary for disposal of this appeal are that on February 11, 1996, at about 7 P.M, Karnail Singh (P.W.5) along with Avtar Singh (P.W.6) were sitting at the village well in the evening near Gurdwara Sahib. Kulwinder Singh (hereinafter referred to as `the deceased') joined them. In the meantime, Kulwant Singh (appellant), empty handed, Kirpal Singh alias Pala (appellant), armed with a knife, while Karamjit Singh and Sadhu Singh (acquitted accused), armed with `Dangs' reached there. They raised `Lalkara' that the deceased be killed. They also threatened Karnail Singh and Avtar Singh to run away from the spot. Appellant Kirpal Singh opened the attack and inflicted knife blow on the chest of the deceased. Thereafter, appellant Kulwant Singh snatched knife from Kirpal Singh and inflicted a knife blow in the stomach of the deceased. Karnail Singh and Avtar Singh raised hue and cry, which attracted other people to

the spot and the accused ran away with their respective weapons. The deceased was taken to Civil Hospital, Rupnagar, where he was declared dead by the doctor. Dr. Balwinder Singh (P.W.2) sent intimation (Exhibit P.E) to the Police Station about the arrival of the dead body of the deceased. Sub Inspector Avinderbir Singh (P.W.10) reached Civil Hospital, recorded statement (Exhibit P.H) of Karnail Singh (P.W.5) and after making his endorsement (Exhibit P.H/2) on it sent the same to Police Station Sadar, Rupnagar for registration of case, where First Information Report (Exhibit P.H/1)_ was recorded on its basis. Sub Inspector Avinderbir Singh (P.W.10) prepared inquest report (Exhibit P.B). Post mortem on the dead body was got conducted. Thereafter, he visited the place of occurrence, prepared rough site plan and recorded statements of the witnesses under Section 161 of the Code of Criminal Procedure. After completion of necessary formalities, the accused were arrested and the challan was presented in the Committing Court.

3. Vide charge sheet dated May 14, 1996, the accused ware charged under Section 302 read with Section 34 of the Code. They did not plead guilty to the charge sheet and claimed trial.

4. In order to prove its case against the accused, the prosecution examined P.W.1 Dr. Sunil K. Dhawan, P.W.2 Dr. Balwinder Singh, P.W.3 Jatinder Singh, P.W.4 Moharrir Head Constable Balwant Singh, P.W.5 Karnail Singh, P.W.6 Avtar Singh, P.W.7 Harbans Lal, P.W.8 Sub Inspector Joga Singh, P.W.9

Constable Harjinder Singh, P.W.10 Sub Inspector Avinderbir Singh, Investigating Officer, P.W.11 Surinder Singh and P.W.12 Constable Sujan Singh.

5. After closure of the prosecution evidence, statements of the accused were recorded under Section 313 of the Code of Criminal Procedure in which they denied the incriminating evidence against them and pleaded false implication due to suspicion. The accused further stated that they were illegally detained by the police from February 12, 1996. Ultimately, this false case was planted upon them and the witnesses are interested. They also examined D.W.1 Ganga Parshad.

6. The trial Court, on consideration of the material on record, more particularly the version of eye-witnesses Karnail Singh (P.W.5) and Avtar Singh (P.W.6), found the appellants guilty and convicted and sentenced them as mentioned above.

7. We have heard the learned counsel for the parties and have gone through the records of the case with their help.

8. While arguing before us, learned counsel for the appellants has laid stress on the point that evidence of the prosecution against accused-appellant Kulwant Singh was similar to that of co-accused Karamjit Singh and Sadhu Singh, who were acquitted by the trial Court. As the ocular version is not corroborated by the medical evidence, appellant Kulwant Singh is also entitled to acquittal. He further referred to certain documents on the file, according to which Kulwant Singh was

handicapped to the extent of 60 per cent. It was highly improbable for him to snatch knife from accused Kirpal Singh and cause injury on the person of the deceased.

9. On the other hand, learned Public Prosecutor reiterated the stand taken in the trial Court and contended that the findings of the trial Court deserve to be upheld.

10. The trial Court, while recording finding against appellants Kulwant Singh and Kirpal Singh, took into account the ocular version of P.W.5 Karnail Singh and P.W.6 Avtar Singh and then found its corroboration from the medical evidence. In this view of the situation, we are required to review the original statements of P.W.5 Karnail Singh and P.W.6 Avtar Singh, recorded under Section 161 of the Code of Criminal Procedure, and their evidence in the Court. We are also required to go through the evidence of Dr. Sunil K. Dhawan (P.W.1), who conducted post mortem examination.

11. After receipt of information regarding the death of Kulwinder Singh from Civil Hospital, Rupnagar, S.I. Avinderbir Singh (P.W.10) recorded the statement of Karnail Singh under Section 161 of the Code of Criminal Procedure on February 11, 1996 at 9 P.M wherein it has been recorded that Kulwant Singh alias Kuka snatched knife from the hands of Kirpal Singh and inflicted knife blow on the stomach of Kulwinder Singh. Avtar Singh (P.W.6) has also stated likewise that appellant Kulwant Singh snatched knife from appellant Kirpal Singh and caused injury in the stomach

of Kulwinder Singh. When examined in the Court P.W.5 Karnail Singh and P.W.6 Avtar Singh made identical improvements and changed the version regarding role of appellant Kulwant Singh. P.W.5 Karnail Singh stated that Kulwant Singh snatched knife from Kirpal Singh and gave blows on the shoulder, back and thighs of Kulwinder Singh whereas P.W.6 Avtar Singh stated that he caused injuries on both the buttocks, right shoulder, neck, back and thighs of Kulwinder Singh after snatching the knife.

12. Dr.Sunil K. Dhawan (P.W.1), who conducted post mortem examination on the dead body of Kulwinder Singh, found the following nine injuries:-

" 1. An incised wound of 4 x ½ on the interior chest wall on left side 10 cm below the nipple.

2. 4 x 2 cm incised wound on left side of base of the neck, 7 cm medial to bony prominence of right shoulder joint.

3. Incised wound of 2 x 1 cm on back in right scapular region.

4. Incised wound of 4 x 2 cm in middle of back.

5. Incised wound 2 x 1 cm in lower and inner quadrant of glutel region (right.)

6. Incised oblique wound of 3 x 2 cm on right ingunil region.

7. Incised wound of 2 x 1 cm just above the right iliac bone in mid axillary line.

8. 2 x 1 cm incised wound on lateral aspect of left thigh.

9. 2 x 1 cm incised wound on upper and outer quadrant of glutal region (left)."

13. So, there is no injury on the stomach of the deceased, as stated by the prosecution witnesses in their statements recorded under Section 161 of the Code of Criminal Procedure on February 11, 1996 i.e immediately after the occurrence. Later on, while deposing in Court, they tried to co-relate their evidence with the medical evidence to further and firmly implicate accused Kulwant Singh.

14. In the absence of any injury with blunt weapon on the person of the deceased, the trial Court acquitted accused Karamjit Singh and Sadhu Singh by taking into account the contradiction in the medical evidence and ocular account.

15. We are of the considered view that following the same analogy in the case of appellant Kulwant Singh, he was also entitled to acquittal as both the eye-witnesses i.e P.W.5 Karnail Singh and P.W.6 Avtar Singh tried to make improvements in their statements to implicate Kulwant Singh and, further, there is no injury with knife on the stomach of the deceased. Otherwise also, the participation of appellant Kulwant Singh in the occurrence appears to be doubtful in view of the fact that he is 60 per cent handicapped, as argued by the learned counsel for the appellants.

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16. However, so far as appellant Kirpal Singh is concerned, the evidence of both the eye-witnesses Karnail Singh (P.W.5) and Avtar Singh (P.W.6) is categorical and finds corroboration from the medical evidence furnished by Dr. Sunil K. Dhawan (P.W.1), who had conducted autopsy on the dead body of Kulwinder Singh. Both the eye-witnesses stated that Kirpal Singh (appellant) opened the attack and gave knife blow on the chest of Kulwinder Singh (deceased). The injury on the chest which has been mentioned by Dr. Sunil K. Dhawan (P.W.1) in his post-mortem report is as under:-

> " 1. An incised wound of 4 x ½ on the interior chest wall on left side 10 cm below the nipple."

17. Nothing could be pointed out by the defence counsel by referring s to the statements of the eye-witnesses and Doctor,which could, in any way, persuade us to take a different view than the one taken by the learned Sessions Judge in the case of appellant Kirpal Singh. In view of the prosecution having proved its case beyond any reasonable doubt against appellant Kirpal Singh, we are unable to agree with the learned counsel for the appellants when he argued that as three brothers, namely, Kulwant and Kirpal Singh (appellants) and Karamjit Singh (acquitted by the trial Court) and their real uncle Sadhu Singh (acquitted by the trial Court) were involved in the case, therefore, the whole case of the prosecution becomes doubtful.

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In view of the above, we find no merit in the appeal qua appellant Kirpal Singh and dismiss the same. However, for the reasons recorded above, the appeal qua appellant Kulwant Singh is accepted, judgment of conviction and sentence order passed by the trial Court qua him are set aside and he is acquitted of the charge framed against him.

(ASHUTOSH MOHUNTA)
JUDGE

(MOHINDER PAL)
JUDGE

November 15, 2007.
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